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Restaurant El Original and Union de Tronquistas de Puerto Rico, Local 901, IBT, AFL-CIO. Cases 24-CA-8944-1, 24-CA-8976-1, and 24-CA-8978-1

May 13, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND BARTLETT

The General Counsel in this case seeks Summary Judgment on the ground that the Respondent has failed to file an answer to the complaint. Upon charges filed by the Union on May 16, 2001, and June 26 and 27, 2001, in Cases 24-CA-8944, 24-CA-8976, and 24-CA-8978, respectively, the General Counsel issued the complaint on September 28, 2001, against Restaurant El Original, the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the Act. The Respondent failed to file an answer.

On November 8, 2001, the General Counsel filed a Motion for Summary Judgment with the Board. On November 9, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated October 16, 2001, notified the Respondent that unless an answer was filed by close of business on October 23, 2001, a Motion for Default Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Puerto Rico corporation with an office and place of business in Rio

Piedras, Puerto Rico, has been engaged in the restaurant business.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000, and purchased and received at its Rio Piedras, Puerto Rico facility, goods valued in excess of \$50,000 directly from points outside Puerto Rico.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following named person occupied the positions set opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Ruben D. Peña	President and General Manager
Nereida Figueroa	Agent

At all material times José (Cheo) Hgueroa has been the brother-in-law of the Respondent's President and General Manager, and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Included: All employees employed by the Employer at its place of business located at the 65th Infantry Avenue, Km.6.1, Rio Piedras, Puerto Rico.

Excluded: All guards and supervisors as defined by the Act.

On November 15, 2000, the Union was certified as the exclusive collective-bargaining representative of the unit. At all times since November 15, 2000, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about June 22, 2001, the Respondent, by Ruben Peña, at its facility, interfered with its employees' rights under Section 7 of the Act by informing an employee that he was being discharged because of the wage claim filed by the Union.

On about December 23, 2000, the Respondent discharged employee José Figueroa. On about June 26, 2001, the Respondent discharged employees Salome Rodriguez and Jorge Solano. On about June 27, 2001, the Respondent discharged employee Antonio Class. Since the dates of the discharges referred to above, the Respondent has failed and refused to reinstate those employees to their former positions of employment

The Respondent discharged employees Solano and Class because they are included in a wage claim filed on their behalf and they joined and/or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these or other concerted activities. The Respondent discharged employees Figueroa and Rodriguez because they joined and/or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

Since about June 11, 2001, the Union has requested that the Respondent bargain collectively about an initial collective-bargaining agreement, and since about that same date, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSION OF LAW

By discharging José Figueroa, Salome Rodriguez, Jorge Solano, and Antonio Class, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has by this conduct engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) of the Act. In addition, by informing an employee that he was being discharged because of the wage claim filed by the Union, and by discharging employees Solano and Class because they are included in that wage claim filed on their behalf, Respondent interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act. Further, by failing and refusing, since June 11, 2001, to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, the Respondent has violated Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging José Figueroa, Salome Rodriguez, Jorge Solano, and Antonio Class, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. Further, we shall order the Respondent to make José Figueroa, Salome Rodriguez, Jorge Solano, and Antonio Class, whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in

New Horizons for the Retarded, 283 NLRB 1173 (1987). The Respondent also shall be required to remove from its files any reference to the unlawful discharges of José Figueroa, Salome Rodriguez, Jorge Solano, and Antonio Class, and to notify them in writing that this has been done and that the discharges will not be used against them in any way.

In addition, we shall order the Respondent to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Restaurant El Original, Rio Piedras, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they join or assist a union or engage in union or protected concerted activities, including being part of a wage claim filed on their behalf.

(b) Refusing to bargain with Union de Tronquistas de Puerto Rico, Local 901, IBT, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(c) Informing employees that they are being discharged because of a wage claim filed by the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer José Figueroa, Salome Rodriguez, Jorge Solano, and Antonio Class full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make José Figueroa, Salome Rodriguez, Jorge Solano, and Antonio Class whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this order, remove from its files any reference to the unlawful discharges of José Figueroa, Salome Rodriguez, Jorge Solano, and Antonio Class, and within 3 days thereafter, notify each

of them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

(d) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

Included: All employees employed by the Employer at its place of business located at the 65th Infantry Avenue, Km.6.1, Rio Piedras, Puerto Rico.

Excluded: All guards and supervisors as defined by the Act.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Rio Piedras, Puerto Rico, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 23, 2000.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 13, 2002

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against you because you join or assist a union or engage in union or protected concerted activities, including being part of a wage claim filed on your behalf.

WE WILL NOT refuse to bargain with Union de Tronquistas de Puerto Rico, Local 901, IBT, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT inform you that you are being discharged because of a wage claim filed by the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's order, offer José Figueroa, Salome Rodriguez, Jorge Solano, and Antonio Class full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make José Figueroa, Salome Rodriguez, Jorge Solano, and Antonio Class whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlaw-

¹ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ful discharges of José Figueroa, Salome Rodriguez, Jorge Solano, and Antonio Class, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

WE WILL, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employ-

ment, and if an understanding is reached, embody the understanding in a signed agreement:

Included: All employees employed by us at our place of business located at the 65th Infantry Avenue, Km.6.1, Rio Piedras, Puerto Rico.

Excluded: All guards and supervisors as defined by the Act.

RESTAURANT EL ORIGINAL